

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:)	
)	
JOSEPH J. RUPLE and)	Bankruptcy Action
JULIA V. RUPLE, f/k/a)	Case No.: 08-2744
JULIA V. PASHKOVSKAYA)	

FIA CARD SERVICES, N.A.,)	ADV: 08-02720-GMB
formerly MBNA AMERICA)	
BANK, N.A.)	
)	
Plaintiff,)	
)	
v.)	
)	
JULIA V. PASHKOVSKAYA,)	Camden, New Jersey
)	May 18, 2009
Defendant.)	

TRANSCRIPT OF RULING
BEFORE THE HONORABLE GLORIA M. BURNS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Plaintiff: KENNETH S. JANNETTE, ESQUIRE
Weinstein & Riley
14 Penn Plaza, Suite 1300
New York, New York 10122

For the Defendant: WILLIAM MACKIN, ESQUIRE
William Mackin, Esquire, PC
105 North Broad Street
P.O. Box 304
Woodbury, NJ 08096

Audio Operator: Mary Lampone

Transcribed by: DIANA DOMAN TRANSCRIBING
P.O. Box 129
Gibbsboro, New Jersey 08026-129
PHONE: (856) 435-7172
FAX: (856) 435-7124
Email: Dianadoman@comcast.net

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1 (Call to the Order of the Court)

2 THE COURT: FIA Card Services v. Pashkovskaya.
3 Appearances.

4 MR. MACKIN: Very good, Your Honor.

5 THE COURT: Close.

6 MR. MACKIN: William Mackin, representing defendant
7 Julia Pashkovskaya, now known as Julia Ruple.

8 MR. JANNETTE: Good morning, Your Honor. Weinstein &
9 Riley by Kenneth Jannette for the plaintiff FIA Card Services,
10 N.A.

11 THE COURT: Was that Janette?

12 MR. JANNETTE: I'm sorry?

13 THE COURT: Your last name.

14 MR. JANNETTE: Jannette.

15 THE COURT: Jannette. All right. You know when I
16 saw this come on the calendar, I should have done this by
17 telephone conference. And I, you know, I saw it and it was
18 already on the schedule for this morning.

19 MR. MAKIN: Okay.

20 THE COURT: I thought it was in the afternoon on
21 telephone conference. So I'm sorry that everybody had to wait
22 here for the time that we did this morning.

23 MR. JANNETTE: It has been an action-packed morning
24 here in Court.

25 THE COURT: Well you're welcome anytime that you want

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1 to -- all right, this is a very difficult matter, which I think
2 you can tell by the times that I've adjourned this and asked
3 for additional documentation and briefing.

4 You know, we find ourselves in a kind of unusual
5 situation with the way that the financial markets have
6 conducted themselves over the last, I don't know, year, couple
7 of years.

8 And it brings us to the matter, and I certainly think
9 it's -- it's in the debtor's interests for Mr. Mackin to bring
10 a matter before the Court, if he thinks that there's an
11 appropriate standing issue that needs to be brought up before
12 the Court.

13 And it's certainly not as clear as a bell, because of
14 the way that the parties conducted themselves during the course
15 of the time.

16 However, I am somewhat persuaded by the Greer v.
17 O'Dell matter in the Eleventh Circuit, which is similar to the
18 matter before the Court, but somewhat different.

19 It involves a different set of circumstances. The
20 transfer and assignment of accounts, as opposed to the -- just
21 the securitization and further retention of the account, as we
22 have in our case before us.

23 But I think that the Eleventh Circuit's reasoning is
24 something that the Court can look at, as to whether there's
25 standing for a servicer to come before the Court, and whether

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1 they have an interest enough to give them standing, and
2 proceeding in a matter to bring an adversary against the
3 debtor, as it is in this case.

4 And in the Greer v. O'Dell matter, the Court finds
5 that the real dispute is on the standing issue. Because there
6 really isn't any factual dispute with the witnesses that have
7 testified, similar to our -- in our case.

8 Because the debtor doesn't really have an expert to
9 say whether their factual procedures are different. It's
10 really a legal issue. Is there a legal basis for standing that
11 FIA has with regard to this case.

12 And in this case, FIA holds the account and
13 securitized the receivables from that account. Kind of a
14 virtual securitization that somebody in their infinite wisdom
15 came up with. But the fact of the matter is, FIA still retains
16 the account, and still retains the right to collect and proceed
17 on that account on behalf of the trust that it securitized it
18 by.

19 And I think that is enough to come within the frame
20 work set forth by the Eleventh Circuit in Greer v. O'Dell.

21 We're just telling it -- it indicates that the real
22 person -- real party interest principal is meant to identify
23 the person who possesses the right sought to be enforced. And
24 in that case, Max Flow possessed those rights.

25 Where Max Flow is obligated as a servicer to file a

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1 proof of claim on MBNA's behalf, and retain counsel to defend
2 it, to collect payments, and to perform administrative services
3 with respect to the claim, gave them enough.

4 I know that Mr. Mackin brought out the fact that the
5 right to bring the action is in the hands of a creditor.
6 Creditor is broadly -- is defined as a party that has a claim.
7 Claim is broadly defined. The Eleventh Circuit looks at the
8 matter and determines that it's broad -- claim is broad enough
9 to encompass the servicer, to give them the rights to come into
10 Court, sufficient standing to defend the claim and take all
11 required action on behalf of that claim.

12 I think the same standing argument can be made and is
13 made in this case, that by being a servicer, holding the
14 account and having the rights to collect that account on
15 behalf, and having a payment entitlement by virtue of its fees
16 in that case, is sufficient to give standing to FIA Card
17 Services to appear as the plaintiff in this case.

18 And, therefore, I'm going to deny the motion to
19 dismiss filed by the debtor defendant, and I would ask you, Mr.
20 Jannette, to submit an order in accordance with that.

21 Thank you for the work that you did in this case, on
22 both sides, which was extensive.

23 MR. MACKIN: Thank you, Your Honor.

24 MR. JANNETTE: Thank you, Your Honor.

25 (Court adjourned)

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C E R T I F I C A T I O N

I, Josette Jones, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/Josette Jones

05/20/09

JOSETTE JONES

DATE

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